

REMARKS

The office action of July 14, 2005, has been carefully considered.

It is noted that claims 1, 2, 6-8, 10 and 11 are rejected under 35 U.S.C. 103(a) over the patent to Kuroda et al. in view of DE 10004772 to Jolly.

Claim 12 is rejected under 35 U.S.C. 103(a) over Kuroda et al. in view Jolly, and further in view of JP360029595 to Ito.

It is respectfully submitted that the claims presently on file differ essentially and in an unobvious, highly advantageous manner from the constructions disclosed in the references.

Turning now to the references and particularly to the patent to Kuroda et al., it can be seen that this patent discloses an air conditioner and an air conditioning method. Kuroda et al. do not teach an air conditioning system having a flat cooling element arranged within a plaster layer of a wall of the room, where the cooling element includes at least one pre-manufactured web comprised of a carrier mat and a plurality of meandering,

parallel, counter-flow cooling pipes fastened to the carrier mat, and where the cooling pipes are spaced from one another so as to enable, at locations between the pipes, a bonding of the plaster to a base to which it is applied, as in the presently claimed invention. Rather than provide a reference that teaches a flat cooling element, the Examiner is trying to shift the burden to the applicant to show why the cooling element of Kuroda et al. is not flat. In order to make his *prima facie* rejection he must provide a reference that teaches or makes obvious a flat cooling element. Kuroda et al. does not provide such a teaching. Furthermore, Kuroda et al. do not teach a cooling element arranged within a room wall. The construction of Kuroda et al. is a thin (200 mm) component (containing a heat exchanger, a blower and drive motors) arranged within the room itself, not within the wall of the room.

The Jolly reference discloses a ceiling mounted cooler. The Examiner combined Jolly with Kuroda et al. in determining that claims 1, 2, 6-8, 10 and 11 would be unpatentable over such a combination. Applicant respectfully submits that the combination of Jolly and Kuroda et al. does not teach an air conditioning system as recited in the amended claims presently on file. Jolly also does not teach flat cooling elements. The Examiner states in

the Office Action: "Again the cooling element (cooling pipes) of Jolly is similar to the cooling pipes of the claimed invention. Therefore, the cooling element of Jolly is also flat." A clearer example of hindsight reconstruction is not possible. The Examiner himself improperly modifies the prior art based upon the present application to arrive at the presently claimed invention. Without the present application as a guide there is no teaching in either of the references or their combination for providing flat cooling pipes. Additionally, the cooling pipes of Jolly are directly against one another. In the presently claimed invention the cooling pipes are spaced from one another.

Furthermore, the combination of Jolly and Kuroda et al. does not teach an air conditioning system having a flat cooling element arranged within a plaster layer of a wall of the room, where the cooling element includes at least one pre-manufactured web comprised of a carrier mat and a plurality of meandering, parallel, counter-flow cooling pipes fastened to the carrier mat, and where the cooling pipes are spaced from one another so as to enable, at locations between the pipes, a bonding of the plaster to a base to which it is applied, as in the presently claimed invention.

In view of these considerations it is respectfully submitted that the rejection of claims 1, 2, 6-8, 10 and 11 under 35 U.S.C. 103(a) over a combination of the above-discussed references is overcome and should be withdrawn.

The Japanese reference of Ito has also been considered. Since this reference does not come closer to the currently claimed subject matter than the references discussed above it is believed that any detailed comments thereon at this time would be superfluous. Ito adds nothing to the teachings of Jolly and Kuroda et al. so as to arrive at the presently claimed invention.

In view of these considerations it is respectfully submitted that the rejection of claim 12 under 35 U.S.C. 103(a) over a combination of the above-discussed references is overcome and should be withdrawn.

Reconsideration and allowance of the present application are respectfully requested.



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Any additional fees or charges required at this time in connection with this application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

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Dated: October 11, 2005

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450, on October 11, 2005.

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Date: October 11, 2005